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| 6  | IN THE UNITED STATES DISTRICT COURT |                      |
| 7  | FOR THE DISTRICT OF ARIZONA         |                      |
| 8  |                                     |                      |
| 9  | Gerlando Curreri,                   | No. CV09-630-PHX-JAT |
| 10 | Plaintiff,                          | ORDER                |
| 11 | vs.                                 | )<br>)               |
| 12 | Doul Dahan at al                    | )                    |
| 13 | Paul Babeu, et al.,                 | )<br>)               |
| 14 | Defendant.                          | )<br>)               |
| 15 |                                     | )                    |

Plaintiff filed a Motion for Leave to File Second Amended Complaint (Doc. 49) on October 22, 2010. Defendants filed their Response (Doc. 50) on November 4, 2010. The Magistrate Judge entered a Report and Recommendation (Doc. 57) on December 10, 2010, recommending that the undersigned deny Plaintiff's Motion for Leave to file Second Amended Complaint and deny a certificate of appealability if sought by Plaintiff.

Neither party filed an objection to the Report and Recommendation. The Court therefore hereby accepts the R&R to the extent it recommends denying leave to file a Second Amended Complaint. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985)(finding that district courts are not required to conduct "any review at all . . . of any issue that is not the subject of an objection" (emphasis added)); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*)("statute makes it clear that the district judge must review the magistrate judge's findings and recommendations de novo *if objection is made*, but not otherwise" (emphasis in original)); *see also Schmidt v. Johnstone*, 263 F.Supp.2d 1219, 1226 (D. Ariz.

## Case 2:09-cv-00630-JAT Document 71 Filed 03/17/11 Page 2 of 2 2003). The Court modifies the Report and Recommendation to eliminate the suggestion that the undersigned deny a certificate of appealability should Plaintiff seek one because a certificate of appealability pursuant to 28 U.S.C. §2254 does not apply outside of certain habeas writs. Accordingly, IT IS ORDERED Accepting and adopting the Magistrate's Report and Recommendation (Doc. 57) with the slight modification noted above. IT IS FURTHER ORDERED Denying Plaintiff's Motion for Leave to File Second Amended Complaint (Doc. 49). DATED this 16th day of March, 2011. James A. Teilborg / United States District Judge